IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1820 OF 2000

Hisamuddin Abdul Rahim Kazi
residing at V.P. Road Police Quarters
2nd Floor, Room No.44, Girgaum,
Mumbai - 400 004. .. Petitioner

V/s

1. State of Maharashtra

2. The Deputy Commissioner of Police
Zone II, Mumbai

3. Commissioner of Police,
Greater Mumbai

4. Director General of Police
Maharashtra State

5. Hon'ble Home Minister
State of Maharashtra

6. The Joint Secretary
Home Department

7. The Chief Secretary
Home Department

8. The Secretary
Home Department

9. The Deputy Secretary
Home Department .. Respondents

Mr.M.A. Adenwala for the Petitioner.

Mr.R.M. Patne, A.G.P. for the Respondents.

CORAM : H.L. GOKHALE &
MRS. R.S. DALVI, JJ.

DATE OF RESERVING THE JUDGMENT: 15TH JULY 2005

DATE OF PRONOUNCING THE JUDGMENT: 12TH AUGUST 2005

JUDGMENT : (Per H.L. Gokhale, J.)

1. The Petitioner herein is a Sub-Inspector of Police who joined the services of State of Maharashtra way back on 1st March 1967 and has been ordered to be compulsorily retired by an order dated 4th June 1987 passed by the Commissioner of Police, Mumbai after holding a departmental enquiry involving misconduct. The Petitioner preferred an internal Appeal to the State Government, but the same was dismissed on 18th December 1989. He filed an Application to the Maharashtra Administrative Tribunal. The same also came to be dismissed on 19th May 1999. He seeks to challenge all those orders and seeks reinstatement with full back wages.

2. The Respondents to this petition are (1) State of Maharashtra (2) Deputy Commissioner of Police, who conducted the enquiry (3) Commissioner of Police who passed the order of punishment (4) Director General of Police (5) Home Minister (6) Joint Secretary, Home Department (7) Chief Secretary, Home Department, (8) Secretary, Home Department and (9) Deputy Secretary, Home Department.

3. The short facts leading to this petition are as follows:-

. A Motor Lorry bearing No.MHO-1778 laden with smuggled goods was detained at the Lower Gate of Raj

Bhavan, Malabar Hill, Mumbai by Sub-Inspector of SRP one Shri Jaisingrao Chavan on the night of 21st October 1984. The complaint of this Shri Chavan is the basis of the proceeding against the Petitioner. Shri Chavan in his complaint states that on that day he along with one Shri Hollar as usual left the Upper Gate of Raj Bhavan on the night round patrol at about 9.00 p.m. When they walked down the lower drive towards the Lower Gate, they noticed one big branch of a tree fallen on the road. When they approached the tree, they saw one person standing nearby who was later on identified as one Shri Keshav Bhosale of P.W.D. and he stated that he would be removing the tree. He made a signal by hand to someone to come up from the seashore side and one person emerged who was later on identified as one Shri Sabnis, a Superintendent working in the Raj Bhavan. When this Shri Sabnis was asked as to what was he doing there, Shri Sabnis hurried towards the Lower Gate. When Shri Chavan and Shri Hollar followed him, they saw a motor lorry near the Lower Gate with some persons running away. Shri Sabnis started running after the lorry and Shri Chavan and Shri Hollar started running after him. Shri Chavan later on stopped Shri Sabnis and asked as to why he was running. Shri Sabnis stated that the lorry was containing the blankets for distributing them to the riot affected people in Bhiwandi. Shri Chavan then shouted at the people near the Lower Gate and one Shri Pawar and other constables stopped the lorry, but the

persons in charge of the lorry managed to run away in the darkness. Shri Pawar detained Shri Sabnis, who started imploring that he may be allowed to go. Shri Chavan asked Shri Pawar to take Shri Sabnis into the guard-room and asked him to keep an eye on Shri Sabnis. Shri Chavan thereafter tried to contact the Sub-Inspector, in-charge of the Upper Gate, one Shri Prabhu and also caused a phone call to be made to the Gamdevi Police Station.

4. At about 11.15 p.m., the Petitioner along with one Shri Sopan Dinkar Walhekar (Head Constable No.12722), Shri Vivek Shantaram Salekar (P.C. No.22507) and Shri Kisan Laxman Patil (Motor Driver No.17550), all attached to the Gamdevi Police Station, arrived on the scene. On Shri Chavan informing him about the incident, the Petitioner boarded the lorry by taking the torch from Shri Chavan and saw inside as to what was being carried in it. Two policemen with him also went inside and opened one of the packages, from which a couple of packages of 10" x 8" were taken out. The Petitioner stated that they were containing wrist watches. On being asked as to why he was carrying the packages, he stated that they were required for drawing a panchanama. After a few minutes, the Petitioner along with the driver and two constables left the Lower Gate in their jeep.

5. Later on, Shri Prabhu, the Sub-Inspector in-charge of the Upper Gate arrived on the spot and asked Shri Chavan to allow Shri Sabnis to go and then took him outside the gate and again brought him back. The Petitioner and his team came back after about half an hour and later on left the place for informing the ACP and DCP. After the Petitioner went out, Shri Prabhu again requested Shri Chavan to allow Shri Sabnis to go and on his own took him outside to a parked taxi without telling Shri Chavan anything. The Petitioner and his staff returned at about 2.00 a.m. and stated that the matter was being reported to the Custom Authorities. He then told his policemen that if anybody wanted wrist watches, they may take out from the lorry before the Custom Authorities arrived. Some of the packages were removed from the lorry and thrown into the bushes in the dark. This was done by the Petitioner and Shri Prabhu in spite of Shri Chavan objecting to this. There was a verbal exchange between them. After sometime, Shri Prabhu allowed Shri Sabnis to leave the place in a taxi. Shri Prabhu himself went towards the Raj Bhavan and did not return.

6. At about 3.15 a.m., the Custom Officers came and inquired as to what had happened. Shri Chavan states in his complaint that the Petitioner and Shri Prabhu frightened him saying that if he disclosed anything about the concealed goods or about the release of Shri

Sabnis, it would not only harm Shri Sabnis and themselves but also it would cause severe harm to Shri Chavan and hence he kept quiet. The Custom Officers seized the contraband found in the lorry. The Petitioner drew the panchanama and Shri Prabhu helped him. On the next day, i.e. on 21st October 1984, the statement of Shri Chavan was taken by the Custom Authorities, wherein he stated what had happened except detention of Shri Sabnis and his release as also the concealment of the packages in the bushes. It is his case that he did not disclose the full facts due to the pressure of the Petitioner. However, later on he received a summons from them and on 25th October 1984 he disclosed the entire episode implicating Shri Sabnis, the Petitioner and Shri Prabhu and as to how they concealed a few packages in the bushes.

7. It is material to note that in between, i.e. on 23rd October 1984, a search was carried out in the bushes near the Lower Gate of Raj Bhavan and a few packages containing wrist watches were recovered. On 6th November 1984, the Petitioner and others were arrested though released on bail on the same day. On 13th November 1984, he was suspended from service. On 22nd November 1984, the Petitioner was detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA), but was later on released by the Advisory Board on 17th April 1985. 8.

Before starting the full-fledged departmental enquiry, a preliminary investigation was done by the officers of the State Government wherein statements of all concerned were recorded before ACP Shri Khot. The Petitioner's statement was recorded on 29th October 1985. In para 14 of his statement, he stated that he had been falsely implicated by Shri Chavan and Shri Hollar of SRP. He alleged that the seized lorry was in their custody and the SRP had used the time and opportunity to remove the wrist watches by opening the packages. It is thereafter that they had made allegations against him and his staff. In para 15, he specifically alleged that the SRP men had abetted the smugglers. The Petitioner however did not dispute that on receiving the call from the Raj Bhavan and on the instructions of his superior, he had visited the Lower Gate of Raj Bhavan on the night of 21st October 1984 and that he had seen one truck detained over there. He did not dispute that he left the truck as it is and went away with his staff after telling the SRP men to keep a watch. He accepted in para 8 of his statement that initially Shri Chavan and others did not implicate anybody in their statement made on that day. In this para, he specifically stated as follows:-

> "They were questioned as to who removed the contents of three gunny bags. When all of them answered to that question that they do not know

about the contents of the gunny bags and since they were present nobody removed it."

Thus, the Petitioner accepted that on 21st October 1984 itself it was known to him that certain packages were removed from the gunny bags in the lorry. In para 9 of his preliminary statement, he accepted that later a combing operation was conducted in the bushes when some 200 wrist watches and some other parts were found. In para 10 of his statement, he further stated that after 4-5 days, SRP staff changed their statement and turned the doubts upon them. In para 11 of his statement, he disputed the reason given by Shri Chavan and Shri Hollar for changing their statement that the Petitioner had threatened them earlier. In para 12, the Petitioner accepted that Shri Sabnis had alleged that the Petitioner had demanded Rs.25,000/- from him for his release from the scene of incident though he further stated that the allegation was false. In para 13, he accepted that when he went later on to the Upper Gate of Raj Bhavan, Shri Prabhu had told him about the involvement of Shri Prabhu in the smuggling activities.

9. Thus, from this above narration, it is clear that a lorry laden with certain articles was detained at the Lower Gate of the Raj Bhavan on the night of 21st October 1984; and that one Shri Sabnis, Superintendent from Raj Bhavan was connected with this happening. Shri

Pawar, the SRP constable from the Lower Gate stated in the preliminary statement that Shri Sabnis had instructed him to allow the lorry to come in. It is also clear that the Petitioner was the first person from the concerned police station along with his constables to visit the site. He came to know about the incident from the Complainant Shri Chavan and he had also seen Shri Sabnis detained over there. Yet it becomes clear that he and his men left the site for allegedly contacting the superiors. As far as some packages from the lorry being removed is concerned, that is not disputed by the Petitioner. He also does not dispute that they were so recovered in the combing operation on the next day. He however denied that he has done any such thing and alleged that this is done by the SRP persons. What is material to note is that this statement is being made by the Petitioner making such an allegation for the first time when his preliminary statement was recorded on 29th October 1985. If Shri Chavan and SRP personnel were the culprits, one fails to see as to why the Petitioner did not lodge any complaint against them. As against that, the fact remains that the Complainant Shri Chavan did not implicate anybody on the date of the incident, but on 25th October 1984, i.e. just 3 days thereafter he made a clean breast of whatever had happened. He also stated that he had been threatened by the Petitioner and Shri Prabhu and therefore he had not stated the full facts correctly

earlier. Thus, what we find is that the statement of the Complainant involving the Petitioner, Shri Prabhu and Shri Sabnis is made within 3 days of the incident, whereas the explanation of the Petitioner has come more than one year thereafter.

10. After the preliminary investigation, the Commissioner of Police decided to hold a full-fledged enquiry against the Petitioner, Shri Prabhu - the other Sub-Inspector involved in the case and the 3 constables. The statements of Shri Chavan, Shri Hollar, Shri Pawar and other witnesses of the department were recorded. The Petitioner was given an opportunity to cross-examine all witnesses. As far as the statement of the Complainant Shri Chavan is concerned, we hardly find any cross-examination by the Petitioner. In his deposition, Shri Chavan has stated that when the Petitioner and his constables arrived at the place where the lorry was detained, he told him about the incident narrated earlier in the statement. There is no cross-examination on this statement. Shri Chavan further states that Shri Pawar and Shri Kokate of SRP told him that Shri Sabnis had accompanied the lorry when it came there in the Raj Bhavan Campus at 9.45 p.m. Shri Chavan further states that at that time he pointed out Shri Sabnis to the Petitioner and requested him to see what lorry contained and take charge of everything for enquiries. Thereafter Shri Chavan stated as follows:-

"At that time, S.I. Kazi took torch from me and stood on the wooded rear plank of the lorry as it was covered lorry and saw inside with a torch light. He also took the assistance of two policemen in plain clothes who had come with him. Policemen had entered inside out opened one of the package from which the packages of 10" x 8" size were taken out by them and given to S.I. Kazi, who then got down. I asked S.I. Kazi as to what was inside the lorry. He told me that those were the wrist watches and packages from the lorry also contained the same. I then asked S.I. Kazi as to where he was carrying the two packets. He told me that those packets were required for samples for drawing a panchanama at the Police Station and for taking charge of. Just before that also, I had told him when they started opening the packages from the lorry not to do so when Shri Kazi told me that he wanted to see for that it was to be opened. Then, within 5 minutes i.e. at about 11.20 p.m., S.I. Kazi along with driver and those two policemen left the lower gate in a jeep saying that he would go to police station, show the same to the P.I. on duty and come back taking further instructions."

There is no cross-examination of Shri Chavan on all these statements.

11. Later on, Shri Chavan has stated in his deposition that the Petitioner and Shri Prabhu told their men to remove the packages before the Custom people arrive and later on they threw them into the bushes. He has also mentioned that heated arguments took place between them and has used the exact words exchanged. There is no cross-examination on this aspect. Subsequently, it is also stated that when the Custom Officers arrived, the Petitioner and Shri Prabhu frightened him saying that if he would disclose anything about the concealed goods or about the release of Shri Sabnis, it would not only harm Shri Sabnis and themselves, but would also cause severe harm to Shri Chavan and hence he kept quiet helplessly. There is no cross-examination on this statement also.

12. The charges that were levelled against the Petitioner were as follows:-

" **CHARGE**

. Remiss and perverse conduct in that you P.S.I. H.A.R. Kazi while attached to Gamdevi Police Station and while on Station House Duty from 6.00 p.m. on 21-10-1984 to 8.00 a.m. on 22-10-1984 jointly or

severally did commit the following defaults:-

a) Failed to keep clear and proper record of your movements at Gamdevi Police Station.

b) In dereliction of duty tampered with the smuggled goods from motor lorry No.MHO-1778 instead of protecting the same before the arrival of custom staff on the spot at lower Gate, Raj Bhavan by removing part of the smuggled goods from motor lorry No.MHO-1778 through the policemen who had accompanied you and P.S.I. V.L. Prabhu by directing them to take out the packages containing smuggled watches and watch movement parts for themselves and get the same removed. These items were subsequently recovered from open places by the side of lower Gate by the Crime Branch Police staff.

c) Failed to detain D.A. Sabnis, Suptd. Raj Bhavan even though he was involved and concerned in the disposal of smuggled watches and watch movement parts in the motor lorry No.MHO-1778 detained on that night at the lower Gate by the S.R.P. staff and thus failed to take legal action against him.

d) Failed to make any report to superiors about the involvement in the said smuggling activities of K.A. Sabnis, Suptd., Raj Bhavan.

e) Failed to maintain absolute integrity and devotion to dutyas Police Officer and abused and neglected the S.R.P. staff who took objection to your misconduct."

13. After the enquiry, the then Police Commissioner, Shri S.D. Soman came to the conclusion that except for part of Charges (a) and (e), the other charges were established. He, therefore, issued a Show Cause Notice to the petitioner as to why he should not be dismissed. The Petitioner filed his reply. By the time, the reply was considered, there was change of guard and Shri V.K. Saraf became the Police Commissioner. By his order passed on 4th June 1987, he directed the Petitioner to be compulsorily retired.

14. The Petitioner thereafter preferred an Appeal to the State Government, but the same came to be dismissed on 18th December 1989. The Petitioner preferred an Application to the Administrative Tribunal. That also came to be dismissed. Hence, the present Petition.

15. Shri Adenwala, learned counsel appearing for the Petitioner, principally advanced three submissions before us. Firstly, that there was violation of principles of natural justice inasmuch as some of the documents, which he had sought during the enquiry, were not furnished to him. Secondly, that in any case, on

the basis of the material on record, the misconduct had not been established and thirdly, that the Appellate Order was bad inasmuch as it was not a speaking order giving reasons. The first grievance of Shri Adenwala was that the Petitioner had applied for furnishing the copies of the statements made by Shri Jaisingrao Chavan before the Custom Authorities on the second occasion and the same were not furnished to him. His submission was that Shri Chavan had initially not stated anything against the Petitioner, but later on he is supposed to have made an adverse statement. The Petitioner wanted to ascertain as to what were the contents of that statement and to confront Shri Chavan with his statement. It was submitted that by not providing these documents, principles of natural justice have been violated.

16. Reliance was placed on the judgment of the Constitution Bench of the Apex Court in **State of Madhya Pradesh v. Chintaman Sadashiva Waishampayan - AIR 1961 SC 1623**. The Respondent in that matter, who was a Police Officer, was dismissed from service on certain charges. The High court of Madhya Pradesh had quashed the order of dismissal on the ground that the statements of witnesses recorded in the preliminary enquiry were not supplied to the concerned officer and he could not effectively cross-examine the witnesses. The Apex Court relied upon the observation of Venkatarama Aiyar J. in

the case of **Union of India v. T.R. Varma - AIR 1957 SC 832** that broadly speaking it may be observed that rules of natural justice require that the party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no material should be relied upon against him without his being given an opportunity of explaining them.

17. In the present case, it is however clear that as far as the statement made by Shri Chavan before the Custom Authorities is concerned, the Police Authorities did not rely upon the same against the Petitioner. It is true that they did not produce the statement when called upon by the Petitioner, but they informed him in writing by a letter dated 22nd July 1986 that those documents do not form part of the evidence relied upon in the departmental enquiry against the Petitioner nor does the Enquiry Officer has any direct access on them.

18. That apart, from the narration of the facts above, it is clear that the Petitioner did know that Shri Chavan gave one statement to the Customer Officers on the date of the incident and another after 3-4 days. He is fully aware that in the second statement given on 25th October 1984, Shri Chavan implicated the

Petitioner. This is clear from the preliminary statement of the Petitioner referred to earlier and which was recorded on 29th October 1985. Shri Chavan has stated in his deposition in the enquiry that on the date of the incident, he was threatened by the Petitioner and Shri Prabhu, the other Sub-Inspector involved in the case, that the consequence will not be restricted only to them, but he will also suffer therefrom. He has stated that he was frightened and, therefore, on the date of the incident he did not give any particulars. However, later on, after 3 days when he gave his statement on 25th October 1984, he made a clean-breast of all the facts. In the departmental enquiry, Shri Chavan has accepted that on the earlier occasion he had not stated the correct position since he was under pressure. He has reiterated all these facts in his deposition in the departmental enquiry. Thus, the fact remains that Shri Chavan did make one statement earlier and retracted it three days later. However, this was way back in the year 1984. This is known to the Petitioner as can be seen from his preliminary statement. Thus, it cannot be said that any prejudice has been caused to him by not supplying any statement which was made by Shri Chavan on the second occasion before the Custom Officer. Even on the deposition, which was made during the departmental enquiry by Shri Chavan, there is hardly any cross-examination by the Petitioner. It has been laid down by the Apex Court in

State Bank of Patiala v. S.K. Sharma - (1996) 3 SCC 364 that it is for the delinquent to point out as to how each and every document was relevant to the charges or to the enquiry being held against him and whether and how non-supply will prejudice his case. This position has been reiterated in **State of Tamilnadu v. Thiru K.V. Perumal - (1996) 5 SCC 474**. In the present case, the departmental authorities had not relied upon Shri Chavan's statements made before the Custom Authorities. The Petitioner knew as to what were those statements which is clear from his preliminary statement. This being so, non-production of the statement before the Custom Authorities cannot be said to have prejudiced his defence or his cross-examination. We therefore do not find any merit in this submission.

19. The second submission, as stated above, has been that even on the material on record, the misconduct was not established. Reliance is placed on the entries made by Shri Chavan in his diary after the date of the incident and it is submitted that it does not mention the detention of Shri Sabnis or the removal of the wrist watches from the bushes. It is submitted that there is no mention of this material aspect in his own diary. It is difficult to accept Shri Chavan's statement made one year thereafter involving the Petitioner. The defence to this submission has been that Shri Chavan has already explained as to how he was under the threat of the

Petitioner and Shri Prabhu. The fact that Shri Sabnis was detained on the date of the incident for some time and later on he was allowed to go by Shri Prabhu is not disputed by the Petitioner in his preliminary statement. As far as the recovery of the watches from the bushes is concerned, that is also accepted by him. If that is so, the absence of this information in Shri Chavan's diary cannot be said to be fatal for the findings on record arrived at by the Enquiry Officer. What is material to be noted is as to whether there is some material to come to the conclusion which the departmental authorities have arrived at. The Court is not supposed to sit in appeal while exercising the writ jurisdiction and to re-appreciate the evidence as held in **Union of India v. A.N. Rao - AIR 1998 SC 111**. The finding of the Enquiry Officer, therefore, cannot be said to be perverse or without any supporting material only for this omission.

20. The third submission of Shri Adenwala was that the Appellate Order does not disclose the reasons in support thereof. Rule 15 of the Mumbai Police (Punishment and Appeals) Rules, 1956 lays down the relevant Rule with respect to the role of the Appellate Authority. The rule as translated from Marathi is as follows:

> "15. The Appellate Authority shall consider the following aspects:-

(a) Whether the facts on the basis of which the order has been passed are established or not;

(b) Whether the facts which are established support adequately the punishment imposed; and

(c) Whether the punishment imposed is excessive or adequate and in case the authority deems it fit, it may direct the officer passing the order to hold a further enquiry into one or specified points and thereafter pass appropriate and just order which will include the order of enhancing the punishment or imposing further severe punishment.

PROVIDED that in the event the punishment is to be enhanced in the appeal or if further severe punishment is to be imposed, the same will not be done except after issuing the show cause notice to the appellant and without considering the cause shown by him."

21. The impugned order by the Appellate Authority in the present case is dated 18th December 1989. In para 1 thereof, it records that after carefully considering the application of the Petitioner and after examining the

proceedings of the departmental enquiry, the Government had arrived at the conclusion that except half portion of charges mentioned at (a) and (e), all other below mentioned charges levelled against him were proved satisfactorily. Thereafter the five charges are quoted. Then the order states as follows:-

> "Therefore, the Government deems that findings in the show cause served upon you and in the final order passed by the Police Commissioner, Brihan Mumbai are correct and your statement and arguments are not justified. Therefore, the Government had rejected your application."

22. Reliance was placed by the Petitioner on the judgment in the case of **R.P. Bhatt v. Union of India - AIR 1986 SC 1040**. The Apex Court referred to a Constitution Bench judgment rendered in the case of **Som Datt v. Union of India - AIR 1969 SC 414**, wherein it was held that apart from any requirement imposed by any statute or statutory rules, either expressly or by necessary implication, there was no legal obligation that the statutory tribunal should give reasons for its decision. There was also no general principle or any rule of natural justice that statutory tribunal should always and in every case give reasons in support of its decision. In Som Datt’s case, the Apex Court was

concerned with the provisions of sections 164 and 165 of the Army Act which provide for the remedy against the Court Martial. In R.P. Bhatt's case (supra), the Court was concerned with the appellate provision in Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules. The impugned order of the Director General had stated that after thorough examination of the facts, the Director General was of the opinion that the punishment imposed was just and in accordance with the Rules. The Apex Court interfered with the order passed by the Director General of Border Roads Organisation and sent the matter back to him after considering the requirements of the concerned Rule since the Court came to the conclusion that the order in that matter was in breach of the concerned Rule. The Rule concerned provided that the Appellate Authority shall consider (a) whether the procedure laid down in the Rules have been followed, (b) whether the findings were warranted by evidence and (c) whether the penalty was adequate. That was not reflected in the impugned order. The Apex Court held that the word "consider" implied due application of mind and it casts a duty on the Appellate Authority to consider the relevant factors setforth in clauses (a), (b) and (c) thereof.

23. The judgment in R.P. Bhatt (supra) was followed in **Ram Chander v. Union of India - AIR 1986 SC 1173**. In this matter also, the wording of the relevant Rule 22

of the Railway Servants Rules was similar. The order passed by the Railway Board stated that it had carefully considered the appeal and had observed that from the evidence, the findings were warranted and the penalty was a merited one. The appeal was, therefore, dismissed. The Apex Court referred to the judgment of the Constitution Bench in Som Datt (supra) as also the one in the case of **Union of India v. Tulsiram Patel - (1985) 3 SCC 398 = AIR 1985 SC 1416**, which was also a judgment of the Constitution Bench. The Court observed in para 24 that the judgment in Tulsiram Patel's case unequivocally lays down that the only stage at which a Government servant gets a reasonable opportunity of showing cause against the action proposed is at the stage of hearing of the departmental appeal. Thereafter the Court observed:-

> "Such being the legal position, it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsiram Patel's case that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An

> objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fair play and justice also require that such a personal hearing should be given."

In view of these observations, the Apex Court did not deem it necessary to go into the vexed question whether a post-decisional hearing is a substitute of the denial of a right of hearing at the initial stage. The Apex Court therefore held that in the absence of a requirement in the statute or the rules, there is no duty cast on an appellate authority to give reasons where the order is one of affirmance. It however held that the relevant Rule 22 of the Railway Servants Rules in express terms requires the Railway Board to record its findings in appeal. Therefore, although some 14 years had gone after the original order, the Apex Court remanded the matter to the Railway Board for affording a personal hearing at the appellate stage.

24. The Constitution 42nd Amendment Act, 1976 substituted clause (2) of Article 311. It came up for consideration before the Apex Court in Tulsiram Patel’s case (supra). The second proviso to Article 311(2) now laid down that there shall not be need of any enquiry or

giving any notice where a person is dismissed, removed or reduced in rank (i) on the ground of a criminal conviction, or (ii) where it is not practicably reasonable to hold an enquiry, or (iii) where in the interest of security of State, it is not expedient to hold an enquiry. These three exceptions came for authoritative pronouncement in Tulsiram Patel's case where a large number of petitions and appeals of large number of persons concerning the application of different clauses of the second proviso to Article 311(2) were involved. The Court considered the relevant provisions of Central Civil Services (Classification, Control and Appeal) Rules, Railway Servants Rules and Central Industrial Security Force Rules in that matter. The Apex Court disagreed with the view taken in **Divisional Personnel Officer v. T.A. Challappan - AIR 1975 SC 2216,** which had laid down that a rule framed under Article 309 could require observance of a procedure expressly excluded by the second proviso to Article 311(2). In Tulsiram Patel, the Court held that the restriction on the doctrine of pleasure expressly removed by the Constitution could not be re-introduced through an Act or Rules. It however clarified that the second proviso is of exceptional nature and before availing it, the conditions specified therein must be strictly satisfied. Therefore, came the question as to whether a Government servant was now without any remedy and, in that context, the Court observed in para 102

thereof as follows:-

> "102. In this connection, it must be remembered that a government servant is not wholly without any opportunity. Rules made under the proviso to Article 309 or under Acts referable to that Article generally provide for a right of appeal except in those cases where the order of dismissal, removal or reduction in rank is passed by the President or the Governor of a State because they being the highest Constitutional functionaries, there can be no higher authority to which an appeal can lie from an order passed by one of them. Thus, where the second proviso applies, though there is no prior opportunity to a government servant to defend himself against the charges made against him, he has the opportunity to show in an appeal filed by him that the charges made against him are not true. This would be a sufficient compliance with the requirements of natural justice. In Maneka Gandhi's case (AIR 1978 SC 597) and in Liberty Oil Mills v. Union of India (1984) 3 SCC 465 : (AIR 1984 SC 1271), the right to make a representation after an action was taken was held to be a sufficient remedy, and an appeal is a much wider and more effective remedy than a right of making a representation." (underlining

supplied)

These observations have led the Apex Court later on to observe in Ram Chander's case (supra) that the appellate order must be a reasoned one. A somewhat similar provision with respect to consideration of appeal in Rule 23 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 came up for consideration before a Full Bench of this Court in **Anil Atre v. District & Sessions Judge, Aurangabad - 2002 (3) MLJ 750**. Rule 23(2) in nutshell provided that the Appellate Authority shall consider (a) whether the procedure laid down in the Rules had been followed, (b) whether the findings of the Disciplinary Authority are warranted by the evidence on record, and (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe and then pass appropriate order. A Division Bench of this Court in **Anant Sadashiv Chandwandkar v. District Judge & Disciplinary Authority, District Court, Thane - 1997 (3) MLJ 302** had held that it was not necessary to pass a reasoned order. This judgment and a few other decisions in other writ petitions to the similar effect were over-ruled by the Full Bench in Anil Atre's case [per C.K. Thakker, CJ (as he then was in this Court). The Full Bench relied upon Ram Chander's case (supra) and directed the Appellate Authority to rehear the appeal by affording personal hearing and by passing an appropriate speaking order.

25. In the present case, the Maharashtra Administrative Tribunal declined to accept this submission of the Petitioner advanced on the basis of R.P. Bhatt and Ram Chander (supra). The Tribunal preferred to rely upon a subsequent judgment of the Apex court in **State Bank of India v. S.S. Koshal - 1994 AIR SCW 2901**. In that matter, the Court was concerned with the provisions of State Bank of India Regulations. In this matter also, the relevant Rule did provide that the Appellate Authority shall consider whether the findings were justified and/or the penalty was excessive and then may pass an appropriate order. The High court had held that the Rule requires the Appellate Authority to pass a speaking order even if it was an order of affirmance. The order of the concerned Appellate Authority stated that the Board had considered at length the facts of the case including the fact that the Disciplinary Authority had differed from the findings of the Enquiring Authority in respect of two charges. After considering the appeal and other relevant papers and having applied their mind, the Board concluded that there was no ground to sustain the appeal. In para 8 of the order, the Apex court noted the view of the High Court that the rule required passing a speaking order in appeal. Thereafter the Court has observed that it shall assume this view to be a correct one, yet on facts it held the appellate order to be a speaking order.

26. Another matter involving similar Regulations of State Bank of Bikaner and Jaipur came up for consideration in **State Bank of Bikaner and Jaipur v. Prabhu Dayal Grover - (1995) 6 SCC 279**. In para 14 of that judgment, the Court dealt with the requirement of giving reasons by the Appellate Authority. It referred to the relevant Regulation 70(2) and in terms held that this Regulation does not obligate the Appellate Authority to give any reason. It is another matter that on the facts of that case, the Court did hold that the Appellate Authority had applied its mind not only to the proceedings of the enquiry, but the grounds raised by the Appellant. Similar appears to be the position in another judgment in **State Bank of Patiala v. Mahendra Kumar Singhal - 1994 Suppl. (2) SCC 463**. In that matter, the Apex Court had held that in the absence of a specific rule, affording of a personal hearing by the Appellate Authority was not necessary. The Court specifically observed in para 3 that no rule had been brought to its attention which required the Appellate Authority to grant a personal hearing. In Anil Atre's case (supra), the Full Bench of this Court referred to this judgment and held that as against that the relevant Rule 23(2) of the Maharashtra Civil Services Rules required the Appellate Authority to consider as to whether the procedure laid down in the Rules had been followed and then observed that according to the Supreme

Court (as in R.P. Bhatt - supra), the expression "consider" will include within its sweep the application of mind, personal hearing and recording of reasons (para 31 of Anil Atre). In our view, the judgments concerning the State Bank of India Service Regulations will not protect the appellate order in the present case since the appellate provision therein appears to have been formed differently and hence interpreted accordingly. The present matter is concerning a civil servant. The law laid down in Tulsiram Patel (supra) and as explained in Ram Chander, R.P. Bhatt and Anil Atre (supra) on comparable provisions of appeals by civil servants will govern the decision with respect to the impugned appellate order under Rule 15. The Apex Court has observed in Tulsiram Patel (supra) that appeal is a wider and more effective remedy than a representation and in Ram Chander (supra) that a reasoned decision is necessary to promote public confidence and that the considerations of fair play and justice require a personal hearing. The Rule 15 will have to be read as requiring a reasoned order in appeal although it could be affirming the original order.

27. In the present case, we have quoted the relevant Rule 15. The Rule requires the Appellate Authority to consider three aspects as stated therein, namely (a) whether the facts had been established supporting the impugned order, (b) whether the established facts

adequately support the punishment imposed, and (c) whether the punishment was excessive or adequate. The impugned order is cryptic and merely reproduces that the Government had also come to the conclusion that except half portion of charges (a) and (e), all other charges were proved satisfactorily. This was the order passed by the Commissioner of Police and was challenged in appeal. Why that view was being confirmed is not explained in the appellate order. Thereafter merely the five charges are quoted and then it is stated that the Government deems that the findings are correct and the arguments against the same are not justified. It is not explained as to how the charges are established on the basis of facts of the case which is the requirement of clause (a). The order does not reflect at all as to whether the established facts adequately support the punishment or whether the punishment is in any way excessive which is the requirement under clauses (b) and (c). It is the submission of the Petitioner that until this incident leading to the impugned order, he had a clear service record and the impugned punishment was not warranted. At the same time, it has got to be noted that at the end of the departmental enquiry (which was a common enquiry against all the police personnel involved in the misconduct), the Respondents have compulsorily retired Shri Prabhu, other Police Officer involved in the case and Shri Sopan Walhekar, Head Constable. Constable Shri Salekar and Driver Shri Patil were

reduced to minimum pay for one year and suspension being treated as such. The Appellate Authority will consider all these factors and arrive at the appropriate decision with respect to the correct punishment.

28. In the circumstances, we set aside the order passed by the Appellate Authority as confirmed by the Maharashtra Administrative Tribunal and remand the matter back to the Appellate Authority. The Appellate Authority will give a personal hearing to the Petitioner and decide the appeal in accordance with law by passing an appropriate speaking order reflecting its decision as per the three sub-clauses of Rule 15. The order need not be elaborate, but it must be self-explanatory.

29. We make it clear that the Appellate Authority is expected to decide the Appeal on its merits without being influenced by any of the observations on facts in this decision which became necessary in view of submission of the Petitioner before us. It will be certainly open to it to arrive at the same decision if it deems so fit, but for reasons to be recorded in writing. The submissions of both the parties will be available to them when the Appeal is considered and decided. This will however exclude two of the submissions which the Petitioner has chosen to raise before us, viz. (i) that there was any violation of

principles of natural justice by not making available the statement of complainant Jaisingrao Chavan (made before the Custom Authorities on the second occasion) and (ii) that the misconduct could not be said to be established only on account of certain omissions in the diary of Shri Chavan. These two submissions are concluded in view of the finding given by us against the Petitioner. We expect the Appellate Authority to hear and decide the Appeal expeditiously and preferably before the end of December 2005.

30. Rule is made absolute in part without any order as to costs.

(H.L. GOKHALE, J.)

(SMT. R.S. DALVI, J.)